

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 85-0489-RGS

UNITED STATES OF AMERICA,

Plaintiff,

v.

METROPOLITAN DISTRICT COMMISSION, et al.,

Defendants.

CIVIL ACTION NO. 83-1614-RGS

CONSERVATION LAW FOUNDATION OF NEW ENGLAND, INC.,

Plaintiff,

v.

METROPOLITAN DISTRICT COMMISSION,

Defendant.

SCHEDULE SIX COMPLIANCE ORDER NUMBER 198

January 18, 2006

STEARNS, D.J.

This is the one hundred and ninety-eighth Compliance Order that has issued in this litigation. On December 15, 2005, the Massachusetts Water Resources Authority (MWRA) filed its Quarterly Compliance and Progress Report (Quarterly Report). The Conservation Law Foundation (CLF) has filed a response. The United States has indicated that it has no objections or comments to make on the Quarterly Report. I accept the Report and

make the following findings.

I. Schedule Six

A. Activities Not Completed

A status report for the activities on the court's Schedule Six for September of 2005 was certified by Frederick Laskey, the Executive Director of the MWRA, on December 15, 2005. The report indicates that the MWRA was scheduled to complete the construction of interceptor relief for BOS 003-014, and to complete the construction of the detention and treatment facility at the Union Park Pump Station. As explained below, neither of these targets was achieved.

1. Union Park Detention and Treatment Facility

The MWRA reports that it was unable to meet the milestone for the completion of the Union Park facility. The construction has been delayed because of several factors noted in previous Quarterly Reports. The MWRA has granted the contractor an extension until September 23, 2006. Work is presently approximately 87 percent complete. The MWRA is considering a request for a further extension of the completion date to December 31, 2006.

2. Interceptor Relief for BOS003-014

The MWRA reports that it was unable to meet the milestone for the completion of the construction of the interceptor relief for BOS003-014. This was anticipated in light of the MWRA's suspension of final design work on two of the three related construction projects in 2002, for a reassessment of the project plan. The reassessment, which was completed in 2004, confirmed that the original interceptor relief project plan, at a cost of

\$68 million, was the most cost-effective solution, and would reduce combined sewer overflow (CSO) discharges at all of the East Boston CSO outfalls. This would insure that class SB water quality standards would be met more than 95 percent of the time. The MWRA has proposed revising the milestone for the interceptor relief project as part of its ongoing negotiations with the United States Department of Justice (DOJ), the United States Environmental Protection Agency (EPA), and the Massachusetts Department of Environmental Protection (DEP).

B. Quarterly Progress Report

1. Combined Sewer Overflow Program

(a) Long-Term CSO Control Plan

The MWRA continues to work with DOJ, EPA, and DEP towards the goal of reaching a final agreement on the appropriate level of CSO control and recommended plans for the Charles River, the Alewife Brook/Upper Mystic River, and East Boston. According to the MWRA, the parties have been able to resolve almost all of the major outstanding issues. A remaining item is the Prison Point facility, for which the MWRA has provided additional information requested by DOJ and EPA. The MWRA reports that it is optimistic that this issue will be promptly resolved, and that it will shortly thereafter file with the United States a joint motion to amend Schedule Six.

(b) Cambridge Sewer Separation

The MWRA reports that the Commonwealth's Division of Administrative Law Appeals held a prehearing conference on November 18, 2005, regarding the appeal of DEP's March 31, 2005 Superseding Order of Conditions approving Contract 12 work in

and near the associated wetlands. Hearing dates have been set for May 31, June 1, June 7, and June 8 of 2006. The current construction schedule for the Cambridge milestones (with the exception of three projects involving floatables control) is predicated upon receiving the necessary wetlands approvals in June of 2006. If the approvals are not in place by that date, the construction milestones for Contract 12 and the related sewer separation projects in Cambridge will be commensurately delayed.

(c) Quarterly CSO Progress Report

According to the MWRA's Quarterly CSO Progress Report, significant progress has been made on the North Dorchester Bay CSO Storage Tunnel and Facilities project. On October 12, 2005, the MWRA awarded the contract for Construction Management Services for the tunnel and related facilities at a cost of \$11.2 million. The 100 percent design submission was due by the end of December of 2005. The MWRA is presently obtaining necessary easements and permits. It expects to commence design services for the pump station and force main that will be used to dewater the tunnel after storms by September of 2006, in compliance with Schedule Six. In addition, the Pleasure Bay storm drain project is on schedule for completion in May of 2006, and the construction of the BOS019 CSO storage conduit is on schedule for completion in March of 2007.

Finally, the Report indicates that substantial progress is being made on the South Dorchester Bay, Fort Point Channel and Stony Brook sewer separation projects, as well as on the Morrissey Boulevard storm drain. In storms greater than the one-year storm, this storm drain will divert stormwater flows from the CSO storage tunnel to Savin Hill Cove and South Dorchester Bay. The construction is expected to be completed by December

of 2006, in compliance with Schedule Six.

## II. Residuals Back-Up Plan

### (a) Walpole Landfill Site

Pursuant to the court's Order, the MWRA is required to hold the Walpole site as a potential landfill through 2015, or until the completion of the final construction project under Schedule Six, whichever comes later. The Town of Walpole has expressed a desire to use part of the site as playing fields for youth sports. A bill has been submitted to the Legislature which would authorize the Commonwealth's Division of Capital Asset Management (DCAM) to convey a portion of the site to the Town. However, the deed to the Authority from the Commonwealth contains a reverter provision, mandated by the Legislature in chapter 41 of the Acts of 1991, which automatically reinvests the Commonwealth with title to the property if the site is put to any use other than as a landfill.

The MWRA is considering whether the locating of playing fields on the site could compromise the Authority's obligation to begin immediate landfill operations should it be required to do so under the court's Order. The MWRA's preliminary view is that the use proposed by the Town would not so interfere, as long as no permanent structures are erected or alterations made to the site. If no objections are interposed by the court or the interested parties, the MWRA believes that the Massachusetts Legislature and DCAM could agree to a plan whereby a legislative exception to the reverter clause would be enacted, any "change of use" issues under Article 97 would be legislatively resolved, all

with the understanding that the MWRA's compliance with the court's Order is a paramount consideration.

### III. Comments

The CLF lauds the MWRA for the progress it has made on the North Dorchester Bay Tunnel and Facilities Plan. It notes, however, that the projected increase in stormwater discharges to Savin Hill Cove as a result of the Morrissey Boulevard storm drain has caused community concern. The CLF suggests several stormwater source control measures that could significantly reduce discharges into the Cove, such as the construction of road shoulders and parking areas using porous paving material. In addition, the CLF recommends bioretention measures such as vegetated swales, additional tree plantings, tree trenches to promote infiltration, and the building of wetlands. The CLF points out that the site in question includes boulevards with medians and shoulders, and adjacent open space, which are compatible with such stormwater management techniques. It also notes that the Secretary of Environmental Affairs, in her July 16, 2004 Certificate approving the MWRA's plan for North Dorchester Bay, recommended the inclusion of such measures in the project design. The CLF again urges the MWRA to consider these techniques in the design process and to implement them where appropriate.

### IV. Conclusions

At this juncture, there is little need for comment from the court. Despite the failure to meet the milestones for the Union Park facility and Interceptor Relief for BOS003-014, consistent and satisfactory progress is being made on all current projects. The MWRA is

working closely with the United States to reach agreement on the long term CSO control plan. The court looks forward to receiving the parties' joint motion to amend Schedule Six once a final agreement is reached. The court, as a preliminary matter, has no objection to the Town of Walpole's proposal to install playing fields on the landfill site if the MWRA can reach an agreement with the Town, DCAM, and the Legislature along the lines that it suggests in its report. The court will reserve judgment, however, until an agreement is achieved that is consistent with the MWRA's obligations under the court's Order.

ORDER

The parties are ordered to report to the court as scheduled.

SO ORDERED.

/s/ Richard G. Stearns

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UNITED STATES DISTRICT JUDGE